MONTANA LEGISLATIVE HISTORY

Chapter 331 1995

Bill H _____ S 288 Original bill & history ___C

H. Committee on Natural Resources		S. Committee on Natural Resources	
Hearing Date(s) 3/08	___C	Hearing Date(s) 2/08	___C
3/10	___C	2/11	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out _____	___C		

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

No vote sheet 2/11

SB 287 INTRODUCED BY HERTEL, ET AL.

ALLOW DEPARTMENT OF LABOR AND INDUSTRY TO ADOPT RULES AUTHORIZING A WORKERS' COMPENSATION INSURER OR THE DEPARTMENT, UNDER CERTAIN CONDITIONS, TO WAIVE THE REQUIREMENT THAT AN EMPLOYER HAVE A SAFETY COMMITTEE

2/01	INTRODUCED		
2/01	FIRST READING		
2/01	REFERRED TO BUSINESS & INDUSTRY		
2/02	FISCAL NOTE REQUESTED		
2/06	FISCAL NOTE RECEIVED		
2/06	FISCAL NOTE PRINTED		
2/13	HEARING		
2/14	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/15	2ND READING PASSED	50	0
2/16	3RD READING PASSED	50	0
	TRANSMITTED TO HOUSE		
2/20	FIRST READING		
2/20	REFERRED TO BUSINESS & LABOR		
3/10	COMMITTEE REPORT—BILL CONCURRED		
3/13	2ND READING CONCURRED	64	34
3/14	3RD READING CONCURRED	67	33
	RETURNED TO SENATE		
3/16	SIGNED BY PRESIDENT		
3/18	SIGNED BY SPEAKER		
3/20	TRANSMITTED TO GOVERNOR		
3/24	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 238		
	EFFECTIVE DATE: 03/24/95		

SB 288 INTRODUCED BY KEATING, ET AL.

CLARIFY BURDEN OF PROOF FOR ACTIONS IN WHICH AN AGENCY DETERMINES NOT TO CONDUCT AN ENVIRONMENTAL IMPACT STATEMENT

2/01	INTRODUCED		
2/01	FIRST READING		
2/01	REFERRED TO NATURAL RESOURCES		
2/02	FISCAL NOTE REQUESTED		
2/08	HEARING		
2/09	FISCAL NOTE RECEIVED		
2/10	FISCAL NOTE PRINTED		
2/11	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/13	2ND READING PASSED	31	19
2/14	3RD READING PASSED	35	15
	TRANSMITTED TO HOUSE		
2/18	REVISED FISCAL NOTE RECEIVED		
2/18	REVISED FISCAL NOTE PRINTED		
2/20	FIRST READING		
2/20	REFERRED TO NATURAL RESOURCES		
3/08	HEARING		
3/13	COMMITTEE REPORT—BILL CONCURRED		
3/28	2ND READING CONCURRED	54	43
3/29	3RD READING CONCURRED	58	40
	RETURNED TO SENATE		
3/30	SIGNED BY PRESIDENT		
3/31	SIGNED BY SPEAKER		
4/03	TRANSMITTED TO GOVERNOR		

4/05	SIGNED BY GOVERNOR CHAPTER NUMBER 331 EFFECTIVE DATE: 10/01/95		

SB 289 INTRODUCED BY BROOKE, ET AL.

REVISE THE AUTHORITY OF DEPARTMENT OF AGRICULTURE IN ISSUING COMPLIANCE ORDERS THAT REQUIRE CLEANUP OF AGRICULTURAL CHEMICAL SPILLS TO EXCEPT SPILLS AT COMMERCIAL WOOD TREATMENT FACILITIES AND SPILLS THAT THREATEN A PUBLIC WATER SUPPLY SYSTEM

2/01	INTRODUCED		
2/01	FIRST READING		
2/01	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
2/08	HEARING		
2/08	COMMITTEE REPORT—BILL PASSED		
2/10	2ND READING PASSED	49	0
2/11	3RD READING PASSED	46	4
	TRANSMITTED TO HOUSE		
2/11	FIRST READING		
2/15	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION		
2/28	HEARING		
3/08	COMMITTEE REPORT—BILL CONCURRED		
3/11	2ND READING CONCURRED	87	7
3/14	3RD READING CONCURRED	91	8
	RETURNED TO SENATE		
3/16	SIGNED BY PRESIDENT		
3/18	SIGNED BY SPEAKER		
3/20	TRANSMITTED TO GOVERNOR		
3/22	SIGNED BY GOVERNOR CHAPTER NUMBER 192 EFFECTIVE DATE: 10/01/95		

SB 290 INTRODUCED BY TVEIT, ET AL.

ELIMINATE PROHIBITION ON DISCRIMINATION IN INSURANCE BASED ON SEX OR MARITAL STATUS

2/01	INTRODUCED		
2/01	FIRST READING		
2/01	REFERRED TO JUDICIARY		
2/02	REREFERRED TO BUSINESS & INDUSTRY		
2/15	HEARING		
2/16	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING DO PASS MOTION FAILED	23	27
2/20	2ND READING INDEFINITELY POSTPONED	29	21
2/21	MOTION FAILED TO RECONSIDER PREVIOUS ACTION TAKEN ON 2ND READING	23	27

SB 291 INTRODUCED BY GAGE

REMOVE REQUIREMENT THAT A TENURE TEACHER BE GRANTED SAME SALARY AS THAT PROVIDED IN LAST EXECUTED CONTRACT WITH THE TEACHER

2/01	INTRODUCED		
2/01	FIRST READING		
2/01	REFERRED TO EDUCATION & CULTURAL RESOURCES		
2/08	HEARING		
2/10	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/11	2ND READING PASSED	23	21
2/13	3RD READING PASSED	26	24

SENATE BILL NO. 288

INTRODUCED BY Feland Keating Curtiss Nelson Bennett McGee Stovall Cash Brainard Taylor Burnett HARP Cusmar HARRISTAD Swysgood

A BILL FOR AN ACT ENTITLED: "AN ACT EXEMPTING CERTAIN ACTIONS BY AGENCIES OF STATE GOVERNMENT FROM REQUIREMENTS OF THE MONTANA ENVIRONMENTAL POLICY ACT; ALLOWING AGENCIES TO FIND ON A CASE-BY-CASE BASIS THAT AN EXEMPTED ACTION OR COMBINATION OF ACTIONS IS A MAJOR ACTION SIGNIFICANTLY AFFECTING THE QUALITY OF THE HUMAN ENVIRONMENT; REQUIRING AGENCIES TO ADOPT THIS FINDING AS A DECLARATORY RULING PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT; AND AMENDING SECTIONS 2-4-501 AND 75-1-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-1-201, MCA, is amended to read:

"**75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state ~~shall~~ must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except as provided in ~~subsection~~ subsections (2) and (3), shall:

(i) ~~utilize~~ use a systematic, interdisciplinary approach ~~which~~ that will ~~insure~~ ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking ~~which~~ that may have an impact on ~~man's~~ the environment;

(ii) identify and develop methods and procedures ~~which~~ that will ~~insure~~ ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(iii) include in ~~every~~ each recommendation or report on proposals for projects, programs, legislation, and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects ~~which~~ that cannot be avoided ~~should~~ if the proposal ~~be~~ is

implemented;

(C) alternatives to the proposed action;

(D) the relationship between local short-term uses of ~~man's~~ the environment and the maintenance and enhancement of long-term productivity; and

(E) any irreversible and irretrievable commitments of resources ~~which~~ that would be involved in the proposed action ~~should~~ if it ~~be~~ is implemented;

(iv) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal ~~which~~ that involves unresolved conflicts concerning alternative uses of available resources;

(v) recognize the national and long-range character of environmental problems and, ~~where~~ when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of ~~mankind's~~ the world environment;

(vi) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(vii) initiate and ~~utilize~~ use ecological information in the planning and development of resource-oriented projects; and

(viii) assist the environmental quality council established by 5-16-101; and

(c) prior to making any detailed statement as provided in subsection (1)(b)(iii), the responsible state official shall consult with and obtain the comments of any state agency ~~which~~ that has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of ~~such~~ the statement and the comments and views of the appropriate state, federal, and local agencies ~~which~~ that are authorized to develop and enforce environmental standards ~~shall~~ must be made available to the governor, the environmental quality council, and the public and ~~shall~~ must accompany the proposal through the existing agency review processes.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1 through 3.

~~(3) (a) Until the board of oil and gas conservation adopts a programmatic environmental statement, but no later than December 31, 1989, the issuance of a permit to drill a well for oil or gas is not a major action of state government as that term is used in subsection (1)(b)(iii).~~

~~(b) The board of oil and gas conservation shall adopt a programmatic statement by December 31, 1989, that must include but not be limited to:~~

~~(i) such environmental impacts as may be found to be associated with the drilling for and production of oil and gas in the major producing basins and ecosystems in Montana;~~

~~(ii) such methods of accomplishing drilling and production of oil and gas as may be found to be necessary to avoid permanent impairment of the environment or to mitigate long-term impacts so that the environment and renewable resources of the ecosystem may be returned to either conditions similar to those existing before drilling or production occurs or conditions that reflect a natural progression of environmental change;~~

~~(iii) the process that will be employed by the board of oil and gas conservation to evaluate such environmental impacts of individual drilling proposals as may be found to exist;~~

~~(iv) an appropriate method for incorporating such environmental review as may be found to be necessary into the board's rules and drill permitting process and for accomplishing the review in an expedient manner;~~

~~(v) the maximum time periods that will be required to complete the drill permitting process, including any environmental review; and~~

~~(vi) a record of information and analysis for the board of oil and gas conservation to rely upon in responding to public and private concerns about drilling and production.~~

~~(c) The governor shall direct and have management responsibility for the preparation of the programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel of appropriate state agencies must be used to the extent the governor deems necessary to complete the statement. The governor shall forward the completed draft programmatic statement to the board of oil and gas conservation for hearing pursuant to the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the statement to the board for adoption and use in the issuance of permits to drill for oil and gas.~~

~~(d) Until the programmatic environmental statement is adopted, the board of oil and gas conservation shall prepare a written progress report after each regular meeting of the board and after any special board meeting that addresses the adoption or implementation of the programmatic environmental statement. A copy of each report must be sent to the environmental quality council.~~

(3) An agency of the state is exempt from the provisions of parts 1 through 3 when undertaking an action that involves the issuance of a lease, permit, license, easement, certificate, or other approval, entitlement for use, or permission to act, except that an agency may, in its discretion, on a case-by-case basis, find that an action or a combination of actions constitutes a major action significantly affecting the quality of the human environment as specified in subsection (1)(b)(iii). In order to make this finding, the agency shall issue a declaratory ruling under Title 2, chapter 4, part 5, of the Montana Administrative Procedure Act. If an agency makes this finding, parts 1 through 3 are applicable to the action or combination of actions."

Section 2. Section 2-4-501, MCA, is amended to read:

"**2-4-501. Declaratory rulings by agencies.** (1) Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency.

(2) To make a finding under 75-1-201(3), an agency shall issue a declaratory ruling.

(3) A copy of a declaratory ruling must be filed with the secretary of state for publication in the register. A declaratory ruling or the refusal to issue ~~such a~~ that ruling ~~shall be~~ is subject to judicial review in the same manner as decisions or orders in contested cases."

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0288 as introduced

DESCRIPTION OF PROPOSED LEGISLATION:
An act exempting certain actions by agencies from the Montana Environmental Policy Act (MEPA), except that an agency has discretion to issue a declaratory ruling under the Montana Administrative Procedure Act that an action constitutes a major action having a significant effect on the quality of the human environment and then must comply with MEPA.

ASSUMPTIONS:
Environmental Quality Council (EQC)

1. This legislation will affect a number of state government agencies that currently prepare environmental review documents under MEPA, including: Department of State Lands (DSL), Department of Fish, Wildlife and Parks (FWP), Department of Health and Environmental Sciences (DHES), Department of Natural Resources and Conservation (DNRC), Department of Agriculture, Department of Livestock, and the Department of Commerce.
2. EQC as established in statute is the agency to ensure that the policies embodied in MEPA are carried out by the executive branch agencies.
3. EQC has 1.00 FTE designated as the agency MEPA coordinator and has prioritized the training of state agencies in proper implementation of MEPA. In the past two years, EQC has trained over 550 state employees, developed a handbook for agency personnel, and conducted two continuing legal education programs for agency and private attorneys.
4. If SB288 is adopted, MEPA model rules would have to be revised. EQC has coordinated rule revisions in the past.
5. EQC will continue to prioritize MEPA implementation and training, will make the necessary modifications to the training program and handbook information, and will assist agencies with requirements of this legislation.
6. EQC will continue to exist and will receive the budget as proposed by the agency and contained in the Executive Budget recommendation. Any costs associated with this legislation will be absorbed within the 1997 biennium budget.
7. A new fiscal note may need to be prepared if certain legislative branch reorganization proposals are adopted.
8. Fewer environmental impact statements will be prepared, although agencies must still conduct environmental reviews on land acquisition, fishing access site modifications, etc.
9. EQC will receive fewer environmental review documents.

Department of State Lands (DSL)

10. As a result of this legislation, DSL will not be required to complete any environmental assessments pursuant to the MEPA.
11. The decision not to prepare an Environmental Impact Statement (EIS) is in the complete discretion of DSL and not reviewable in a court of law.
12. The additional cost of preparing and publishing the declaratory judgment will be offset by cost savings resulting from not preparing and publishing environmental assessments (EA) on permitted activities.

(continued on page 2)

Dave Lewis 2-9-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Keating 2-10-95
TOM KEATING, PRIMARY SPONSOR DATE

Fiscal Note for SB0288, as introduced

SB 288

13. The Board of Land Commissioners is required to administer the school trust lands to secure the largest measure of legitimate and reasonable advantage to the trust (77-1-202, MCA).
14. Under the direction of the land board, DSL is authorized to sell timber and other forest products from trust lands (77-5-201, MCA).
15. The current annual harvest rate is 32 million board feet (MMBF).
16. DSL will sell an additional 6 MMBF of timber annually as a result of this act, beginning with 4 MMBF in FY96 and 6 MMBF in FY97.
17. DSL will sell the additional volume at an average rate of $290 per thousand board feet (MBF).
18. 50% of the timber volume sold in FY96 will be logged in FY97, and the other 50% will be logged in FY98. Similarly, 50% of the timber volume sold in FY97 will be logged in FY98, and the other 50% will be harvested in FY99.
19. Stumpage prices will not increase.
20. Individual timber sales will not be subject to MEPA.
21. Revenue estimates are based on additional timber volume contracted for sale as a result of the act.
22. The additional volume will be harvested from Common School tracts.
23. The provisions of 2-3-101-114, MCA, and 26.2.701-707 ARM concerning public participation in agency decisions apply to actions taken by DSL.
24. DSL activities will continue to be affected by constraints associated with the Threatened and Endangered Species Act, the Antiquities Act, Streamside Management Zone requirements, water quality requirements, and other constraints as required by law or stipulated in department operating standards.

Department of Health and Environmental Sciences (DHES)

25. No additional duties are required of DHES as a result of this legislation.

Department of Natural Resources and Conservation (DNRC)

26. To protect the state from a series of abuse of discretion suits, most state actions that currently require review under subsection (1) will require a declaratory ruling proceeding. The cost of the declaratory ruling proceedings will be sustained by the DNRC.
27. Declaratory proceedings in civil court concerning the issue of what constitutes a "major state action" are time intensive and costly. An administrative process to make such a determination should be less time intensive and less costly.
28. DNRC currently processes an average of six MEPA compliance actions per year. Each would require a declaratory ruling hearing. Three of the six annual MEPA compliance actions will fall under the Major Facility Siting Act (MFSA) and, therefore, the MFSA applicant will pay the costs of those declaratory ruling proceedings.
29. Minimal operating expenses will be absorbed within the present law base budgets.
30. Declaratory ruling hearings would be conducted with either a staff attorney or contracted out to agency legal services at the Department of Justice. A portion of the estimated costs of $20,400 each year would be offset by $11,000 of MFSA fees per year with the balance being supported with general fund.

Department of Fish, Wildlife and Parks (FWP)

31. FWP will continue to do environmental reviews under MEPA for actions that are not covered by this act.
32. FWP will continue to conduct environmental reviews for most actions involving the issuance of a lease, permit, license, easement, certificate, or other approval, entitlement for use, or permission to act.
33. The cost and length of time necessary to conduct an EIS will increase by an amount that corresponds to the cost and time of preparing and publishing a declaratory ruling. All additional costs will be absorbed within current department budgets.

FISCAL IMPACT:

Environmental Quality Council

There will be no fiscal impact to the Environmental Quality Council.

Department of State Lands

	FY96 Difference	FY97 Difference
Revenues:		
School Equalization	0	551,000
Permanent Trust	0	29,000
Total	0	580,000

Department of Health and Environmental Sciences

There will be no fiscal impact to the Department of Health and Environmental Sciences.

Department of Natural Resources and Conservation

The net impact to the Department of Natural Resources and Conservation would be $9,400 of general fund each year.

Department of Fish, Wildlife and Parks

There will be no fiscal impact to the Department of Fish, Wildlife and Parks.

Department of Transportation

There will be no fiscal impact to the Department of Transportation.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Department of State Lands

Forestry annual revenue in FY98 would increase by $1.45 million, and in FY99 and subsequent years increase by $1.74 million. An unquantifiable increase in revenue from other trust land administration programs can also be expected.

TECHNICAL NOTES:

1. It appears that a declaratory ruling must be made before the part (3) exemption is applicable. The use of the term "part" may be inappropriate; the correct term may be "subsection". Only subsection (1) is substantive, the other two subsections are exemptions and the issuance of a declaratory ruling should not impact on their applicability.
2. Before an agency conducts an EIS, this act requires the agency to make a finding that an action constitutes a major action significantly affecting the quality of the human environment. It will be necessary to conduct an environmental assessment in order to make that finding.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0288, third reading

DESCRIPTION OF PROPOSED LEGISLATION:
This bill clarifies the burden of proof for actions in which an agency determines not to conduct an environmental impact statement; it exempts the legislature from the provisions of the Montana Environmental Policy Act.

ASSUMPTIONS:
1. This legislation as amended will not affect the total number of environmental review documents completed by state agencies under MEPA. It may increase the number of environmental assessments (EA) and mitigated environmental assessments (MEA), if agencies decide not to prepare environmental impact statements (EIS) because they will not be so easily challenged in their decision not to prepare an EIS.
2. Under MEPA, agencies may charge an applicant for a permit or license fee to prepare an EIS, but not an EA, except under limited circumstances for hard rock mining permits. This may increase agency costs if few EISs are prepared, but this potential effect is difficult to estimate.
3. Although MEPA requires under current law that legislation is subject to environmental reviews, the legislature has never complied with this provision.

FISCAL IMPACT:
There is no fiscal impact to the Departments of Lands, Natural Resources and Conservation, Transportation, and Health and Environmental Sciences; Environmental Quality Council; and the Legislature.

Dave Lewis 2-18-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

2-18-95
TOM KEATING, PRIMARY SPONSOR DATE

SENATE BILL NO. 288

INTRODUCED BY KEATING, CURTISS, MILLS, BENEDICT, FELAND, MOHL, MCGEE, STOVALL, TASH, BRAINARD, TAYLOR, BURNETT, HARP, GAGE, CRISMORE, AKLESTAD, SWYSGOOD, DEVLIN

A BILL FOR AN ACT ENTITLED: "AN ACT ~~EXEMPTING CERTAIN ACTIONS BY AGENCIES OF STATE GOVERNMENT FROM REQUIREMENTS OF THE MONTANA ENVIRONMENTAL POLICY ACT; ALLOWING AGENCIES TO FIND ON A CASE-BY-CASE BASIS THAT AN EXEMPTED ACTION OR COMBINATION OF ACTIONS IS A MAJOR ACTION SIGNIFICANTLY AFFECTING THE QUALITY OF THE HUMAN ENVIRONMENT; REQUIRING AGENCIES TO ADOPT THIS FINDING AS A DECLARATORY RULING PURSUANT TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT~~ CLARIFYING THE BURDEN OF PROOF FOR ACTIONS IN WHICH AN AGENCY DETERMINES NOT TO CONDUCT AN ENVIRONMENTAL IMPACT STATEMENT; EXEMPTING THE LEGISLATURE FROM THE PROVISIONS OF THE MONTANA ENVIRONMENTAL POLICY ACT; AND AMENDING ~~SECTIONS 2-4-501 AND~~ SECTION 75-1-201, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 75-1-201, MCA, is amended to read:

"**75-1-201. General directions -- environmental impact statements.** (1) The legislature authorizes and directs that, to the fullest extent possible:

(a) the policies, regulations, and laws of the state ~~shall~~ must be interpreted and administered in accordance with the policies set forth in parts 1 through 3;

(b) all agencies of the state, except THE LEGISLATURE AND EXCEPT as provided in ~~subsection subsections~~ SUBSECTION (2) ~~and (3)~~, shall:

(i) ~~utilize~~ use a systematic, interdisciplinary approach ~~which~~ that will ~~insure~~ ensure the integrated use of the natural and social sciences and the environmental design arts in planning and in decisionmaking ~~which~~ that may have an impact on ~~man's~~ the environment;

(ii) identify and develop methods and procedures ~~which~~ that will ~~insure~~ ensure that presently unquantified environmental amenities and values may be given appropriate consideration in decisionmaking along with economic and technical considerations;

(iii) include in ~~every~~ each recommendation or report on proposals for projects, programs, ~~legislation,~~

and other major actions of state government significantly affecting the quality of the human environment, a detailed statement on:

(A) the environmental impact of the proposed action;

(B) any adverse environmental effects ~~which~~ that cannot be avoided ~~should~~ if the proposal ~~be~~ is implemented;

(C) alternatives to the proposed action;

(D) the relationship between local short-term uses of ~~man's~~ the environment and the maintenance and enhancement of long-term productivity; and

(E) any irreversible and irretrievable commitments of resources ~~which~~ that would be involved in the proposed action ~~should~~ if it ~~be~~ is implemented;

(iv) study, develop, and describe appropriate alternatives to recommend courses of action in any proposal ~~which~~ that involves unresolved conflicts concerning alternative uses of available resources;

(v) recognize the national and long-range character of environmental problems and, ~~where~~ when consistent with the policies of the state, lend appropriate support to initiatives, resolutions, and programs designed to maximize national cooperation in anticipating and preventing a decline in the quality of ~~mankind's~~ the world environment;

(vi) make available to counties, municipalities, institutions, and individuals advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

(vii) initiate and ~~utilize~~ use ecological information in the planning and development of resource-oriented projects; and

(viii) assist the environmental quality council established by 5-16-101; and

(c) prior to making any detailed statement as provided in subsection (1)(b)(iii), the responsible state official shall consult with and obtain the comments of any state agency ~~which~~ that has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of ~~such~~ the statement and the comments and views of the appropriate state, federal, and local agencies ~~which~~ that are authorized to develop and enforce environmental standards ~~shall~~ must be made available to the governor, the environmental quality council, and the public and ~~shall~~ must accompany the proposal through the existing agency review processes.

(2) The department of public service regulation, in the exercise of its regulatory authority over rates and charges of railroads, motor carriers, and public utilities, is exempt from the provisions of parts 1

through 3.

~~(3) (a) Until the board of oil and gas conservation adopts a programmatic environmental statement, but no later than December 31, 1989, the issuance of a permit to drill a well for oil or gas is not a major action of state government as that term is used in subsection (1)(b)(iii).~~

~~(b) The board of oil and gas conservation shall adopt a programmatic statement by December 31, 1989, that must include but not be limited to:~~

~~(i) such environmental impacts as may be found to be associated with the drilling for and production of oil and gas in the major producing basins and ecosystems in Montana;~~

~~(ii) such methods of accomplishing drilling and production of oil and gas as may be found to be necessary to avoid permanent impairment of the environment or to mitigate long-term impacts so that the environment and renewable resources of the ecosystem may be returned to either conditions similar to those existing before drilling or production occurs or conditions that reflect a natural progression of environmental change;~~

~~(iii) the process that will be employed by the board of oil and gas conservation to evaluate such environmental impacts of individual drilling proposals as may be found to exist;~~

~~(iv) an appropriate method for incorporating such environmental review as may be found to be necessary into the board's rules and drill permitting process and for accomplishing the review in an expedient manner;~~

~~(v) the maximum time periods that will be required to complete the drill permitting process, including any environmental review; and~~

~~(vi) a record of information and analysis for the board of oil and gas conservation to rely upon in responding to public and private concerns about drilling and production.~~

~~(c) The governor shall direct and have management responsibility for the preparation of the programmatic statement, including responsibility on behalf of the board of oil and gas conservation for the disbursement and expenditure of funds necessary to complete the statement. The facilities and personnel of appropriate state agencies must be used to the extent the governor deems necessary to complete the statement. The governor shall forward the completed draft programmatic statement to the board of oil and gas conservation for hearing pursuant to the provisions of the Montana Administrative Procedure Act, Title 2, chapter 4. Following completion of a final programmatic statement, the governor shall forward the statement to the board for adoption and use in the issuance of permits to drill for oil and gas.~~

~~(d) Until the programmatic environmental statement is adopted, the board of oil and gas conservation shall prepare a written progress report after each regular meeting of the board and after any special board meeting that addresses the adoption or implementation of the programmatic environmental statement. A copy of each report must be sent to the environmental quality council.~~

~~(3) An agency of the state is exempt from the provisions of parts 1 through 3 when undertaking an action that involves the issuance of a lease, permit, license, easement, certificate, or other approval, entitlement for use, or permission to act, except that an agency may, in its discretion, on a case-by-case basis, find that an action or a combination of actions constitutes a major action significantly affecting the quality of the human environment as specified in subsection (1)(b)(iii). In order to make this finding, the agency shall issue a declaratory ruling under Title 2, chapter 4, part 5, of the Montana Administrative Procedure Act. If an agency makes this finding, parts 1 through 3 are applicable to the action or combination of actions.~~ IN ANY ACTION CHALLENGING OR SEEKING REVIEW OF AN AGENCY'S DETERMINATION THAT A STATEMENT PURSUANT TO SUBSECTION (1)(B)(III) IS NOT REQUIRED, THE BURDEN OF PROOF IS ON THE PERSON CHALLENGING THE DECISION. A COURT MAY NOT SET ASIDE THE AGENCY'S DECISION UNLESS IT FINDS THAT THERE IS CLEAR AND CONVINCING EVIDENCE THAT THE DECISION WAS ARBITRARY OR CAPRICIOUS OR NOT IN COMPLIANCE WITH LAW."

~~**Section 2.** Section 2-4-501, MCA, is amended to read:~~

~~"**2-4-501. Declaratory rulings by agencies.** (1) Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency.~~

~~(2) To make a finding under 75-1-201(3), an agency shall issue a declaratory ruling.~~

~~(3) A copy of a declaratory ruling must be filed with the secretary of state for publication in the register. A declaratory ruling or the refusal to issue such a that ruling shall be is subject to judicial review in the same manner as decisions or orders in contested cases."~~

-END-

SENATE NATURAL RESOURCES

· BILL NO - REFERRED - HEARING - OTHER CONSIDERATION DATES - EXECUTIVE ACTION/DATE/VOTE ------- REREFERRED ---- DATE READ

SB0199	FOSTER, MIKE		REQUIREMENTS FOR COMMERCIAL HAZARDOUS WASTE INCINERATORS				
	1/19	1/30		TABLED ON 02/13	VOTE:		
SB0204	GROSFIELD, LORENTS		PUBLIC WATER SUPPLY ACT ENFORCEMENT REVISIONS				
	1/20	1/25		PASS AS AMENDED	VOTE:		2/02
SB0225	TOEWS, DARYL		REQUIRE SALE OF SOME STATE LANDS IN DANIELS/VALLEY/GARFIELD/PHILLIPS COUNTY				
	1/23	2/06		PASS AS AMENDED	VOTE:		2/16
SB0231	MESAROS, KEN		PRIVATE PROPERTY RIGHT CONSIDERATIONS UNDER MEPA				
	1/24	2/01		PASS AS AMENDED	VOTE:		2/10
SB0234	GROSFIELD, LORENTS		REVISE STATE ENVIRONMENTAL AND NATURAL RESOURCE AGENCIES AND FUNCTIONS				
	1/24	2/03		PASS AS AMENDED	VOTE:		2/16
SB0247	COLE, MACK		INDUSTRIAL WASTE DISCHARGE LIMITATIONS -- RULE AMENDMENT				
	1/25	2/01		TABLED ON 02/20	VOTE:		
SB0252	TVEIT, LARRY		CLARIFY WATER QUALITY LAWS				
	1/26	2/08		PASS AS AMENDED	VOTE:		2/20
SB0267	FORRESTER, GARY		REQUIRE POSTING OF STATE RECREATIONAL LANDS CONTINGENT ON USE FEE INCREASE				
	1/28				VOTE:	FISH & GAME	
SB0288	KEATING, TOM		REVISE THE MONTANA ENVIRONMENTAL POLICY ACT				
	2/01	2/08		PASS AS AMENDED	VOTE:		2/11
SB0330	SWYSGOOD, CHUCK		WATER QUALITY NONDEGRADATION REVISIONS				
	2/08	2/13		PASS AS AMENDED	VOTE:		2/20
SB0331	BECK, TOM		GENERALLY REVISE THE MONTANA WATER QUALITY ACT				
	2/08	2/13		PASS AS AMENDED	VOTE:		2/20
SB0344	TVEIT, LARRY		PROVIDE INCENTIVES FOR ENERGY RECOVERY OF HAZARDOUS WASTES				
	2/09	2/15		TABLED ON 02/20	VOTE:		

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 8, 1995, at 1:00 PM

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Hearing: SB 252. SB 288
Executive Action: None

HEARING ON SB 252

Opening Statement by Sponsor:

SEN. LARRY TVEIT, District 50, Fairview, said he had a substitute SB 252 in the form of amendments drafted by Allen Joslyn **EXHIBIT 1.** The bill had been subject to considerable discussion between the Department of Health and Environmental Sciences and the representatives of industries. The bill provides for a definition of controlled property discharge. He said the second section of the bill provides groundwater mixing zones to extend from the point of discharge to the property boundary, pursuant to the rules by the Board of Health.

water quality management. SB 252 will clearly define the groundwater mixing zones and how they would be monitored.

{Tape: 1; Side: B}

HEARING ON SB 288

Opening Statement by Sponsor:

SEN. TOM KEATING, District No. 5, Billings, said SB 288 deals with the Montana Environmental Policy Act. It does not affect the Act in parts 1-3 and does not change or amend the environmental regulations. The bill is merely a procedural amendment. The Montana Environmental Policy Act is an excellent law for Montana. The purpose of the MEPA cannot be criticized. Especially where the policy says, "the State of Montana in cooperation with the federal government, local governments, and other concerned public and private organizations to use all practicable means and measures including financial and technical assistance, in a manner calculated to foster and promote the general welfare. To create and maintain conditions under which man and nature can coexist in productive harmony, and fulfill the social and other requirements of present and future generations of Montana."

SEN. KEATING said the bill has nothing to do with changing that policy. The MEPA has been abused in its procedures and SB 288 will remedy how the Act is applied. An applicant wishing a permit of any kind, must approach some agency or department of government to obtain that permit. The people with the authority in the departments determine whether that permit involves a major or minor action by state government. If it is a major action of government, then they will operate under parts 1-3 of the MEPA requiring an Environmental Impact Statement and the applicant must comply with all the language and all the rules that are required. If a permit involves a minor action of government, then the department may require only an environmental assessment and will determine what remediation must be done. That would work because the experts are in the various departments.

SEN. KEATING said what is happening is that those who disagree with the determination by the agency that is is a minor action will file a complaint in a district court and they will say that it is a major action under the Montana Codes 75-1-101. Then the agency will have to require an EIS. If the state wishes to fight that challenge, they will go to court and present the scientific evidence for the basis of their decision that says it is a minor action. The defendant must prove his actions or decisions in the court. There is no burden of proof on the plaintiff. The bill says that the agencies are exempt from parts 1-3 if they determine in their expert opinion that it is a minor action that is requested. If it is determined that it is a major action then

they must file a declaratory ruling with the Secretary of State stating why they determined that it was a major action requiring an EIS under MEPA. The bill will not interfere with the protection of the environment. The agencies have the expert staff to make decisions, and the amendment will protect them from harassment and second-guessing and threats, and if they don't comply they will end up in court. But the bill protects them from second guessing pressure.

Proponents' Testimony:

Jim Mockler, Executive Director of the Montana Coal Council, said the Western Energy Mine has done 2 to 3 Environmental Impact Statements, that cost the company a lot of money and time and there was lot of things to deal with. They felt if they didn't do it they would be sued and those that sued had nothing to lose except perhaps the $15 filing fee. SB 288 will not do anything to harm the environment.

Gail Abercrombie, Executive Director of the Montana Petroleum Association, said they support the bill and believe it will contribute to efficiencies and will give the agencies the opportunity to apply their previous experience with similar situations and evaluate whether or not an EIS is needed.

John Fitzpatrick, Pegasus Gold Corporation, said they support the bill and agree with **Mr. Mockler's** statement.

David Owen, Chamber of Commerce, said there are numerous people around the state who are concerned with some of the threats that are out there. The business community wants to know that the money they have spent would protect the environment and not go into some procedure that doesn't accomplish the goal. The bill is a good start towards that.

Opponents' Testimony:

George Darrow, Big Fork, former Montana State Senator and Chief Sponsor of the MEPA, said he opposes SB 288 because MEPA provides a coherent, coordinated, consistent state policy to guide all agencies in major actions significantly affecting the quality of the human environment. It merely requires state agencies to look before they leap. **EXHIBIT 2.**

Steve Gilbert, owner of a Natural Resources Consultant Company, said SB 288 was an anti-business bill. His firm is one of many that employ hundreds of people in Montana, who's work is outlined in MEPA. Those are long-term positions held by professionals. The businesses in Montana pay lots of taxes and they are here because of the quality of life in Montana and the recreational opportunities. Eliminating portions of MEPA would result in the loss of many jobs and the revenue generated. He said SB 288 would be a "quick fix" approach and makes as much sense as over-

stocking a carefully managed ranch to take advantage in a sudden rise in cattle prices.

Janet Ellis representing the Montana Audubon Legislative Fund said they oppose the bill because they don't interpret the bill the same way that **SEN. KEATING** does. Page 4, Lines 1-7 say there "may" be an effect on the environment and it could go through the EIS process. She asked why anyone who was exempt from MEPA would go through the EIS to decide if it was a major action affecting the environment. She suggested asking different attorneys their interpretation of the way the bill is written.

Debby Smith, Helena Attorney representing the Sierra Club, said she opposes **SEN. KEATING'S** SB 288. What MEPA means is that the agency has to decide what the quality of life and repercussions are of a permitting decision before it makes that decision. It requires agencies to be reasonable. The city of Butte is still under orders by the EPA to boil its drinking water because of the mining that occurred there before there was a law such as MEPA. She said to make MEPA the exception rather than the rule will take away the accountability of the public for their actions.

Steve Kelly representing Friends of the Wild Swan, said he was in opposition to SB 288 because of 3 reasons: "exempt, discretion, and case by case." Those words will change the meaning and intent of those agencies who are already paranoid about implementing the laws as they exist with the conflict over increasingly scarce resources. There already is an exemption clause in MEPA called "categorical exclusion."

Jim Jensen, Executive Director, Montana Environmental Information Center, said a recent decision by the Department of State Lands, not to do an Environmental Impact Statement, allowed the second largest gold mine in Montana to more than double in size. He said his group did not consider that to be a minor action, so they sued and won the court case.

George Ochenski, representing Trout Unlimited, said SB 288 provides a good way to eliminate public decision-making in government.

John Vollertsen, landowner in Roosevelt County, said MEPA is probably the most used and misunderstood statute there was. It empowers people to participate in government proposals. A lot of property owners do not realize that their property could be threatened if MEPA did not exist. Industries and taxpayers can all get together under MEPA to identify any problems.

Willa Hall, representing the League of Women Voters of Montana, said they agree with **SEN. KEATING** that MEPA is a good bill, but they oppose weakening it and urge the committee to do not pass SB 288.

Melissa Case, representing Montanans for a Healthy Future, a citizens organization concerned with public health issues, said they oppose SB 288 because it will adversely affect public health. It would allow agencies unlimited discretion regarding alternative options that would benefit public health.

Sara Barnhart, representing Montanans Against Toxic Burning, said MEPA provides a framework where citizens can participate in decisions that affect their communities. SB 288 would rob Montana citizens and state government of the opportunity to be fully educated about environmental, social, and economic impacts.

David Hemion, Montana Association of Churches, said their opposition to SB 288 is based upon stewardship and justice. Justice is maintained when the law is followed as dictated by the democratic process.

Kay Fox, Montana Low Income Coalition, said the low income people in Montana cannot protect themselves without knowing what the government is doing. They urge the state to stand by them and oppose SB 288.

Ted Lange, representing the Northern Plains Resource Council, said they oppose SB 288 for all the reasons that have been discussed. The bill would eliminate citizens from the process and when that happens they get frustrated and tend to file a law suit.

Brad Martin, Director of the Montana Democratic Party, said they were in opposition to SB 288. The air, water, and the land are among the most highly visable areas the government works with. MEPA has done a commendable job in involving the public in the decisions that affect the natural resources of Montana. He said SB 288 is a direct attack on MEPA.

Jim Baumberger, representing Agricultural Marketing, said as a marketer. people were looking for products that come from a clean environment. He asked the committee members to think about that when involving world agriculture markets. The amendment is a direct threat to those resources. They oppose SB 288 and said MEPA should remain as it is.

Questions From Committee Members and Responses:

SEN. WELDON asked **SEN. KEATING** if the bill passes, where is the public participation. **SEN. KEATING** replied that the public has the right to challenge any decision in the permitting process. They can file a complaint in district court if they oppose a decision.

SEN. WELDON asked **SEN. KEATING** who would be making the decisions regarding something that could or could not be a major action. **SEN. KEATING** said any employee who has the authority to determine

the extent of the project, whether or not it would be a major or minor impact. **SEN. WELDON** asked what about an employee who appeals to the director, who then appeals to the board. Ultimately every decision is made by the Board of Health. That doesn't seem like it would stream-line the process. **SEN. KEATING** said the bill does not change that line of authority. Under MEPA people in departments are making decisions as to whether or not it would be a major or minor impact.

SEN. BROOKE asked **Ms. Schmidt** if her department has performed a lot of training for department staff to implement MEPA. **Ms. Schmidt** said they have trained over 550 employees in the implementation of MEPA.

SEN. BROOKE asked **Ms. Schmidt** what takes place in the training for public participation. **Ms. Schmidt** said that by involving the public early on, they can avoid problems with their projects. The thrust of the training is that public participation early on in the process makes for better decisions.

{Tape: 2; Side: A}

SEN. BROOKE said that **SEN. KEATING** said that MEPA had been abused in the process. **Ms. Schmidt** said perhaps in executive session the committee members could share the discussion that they had with the EQC on that point. The reason for the training was to help agencies stay out of trouble with MEPA and to avoid challenges.

CHAIR. GROSFIELD asked **John North, Chief Legal Counsel, Department of State Lands,** whether if the bill passes, it would be changing some of the agencies responses with respect to MEPA compliances. He asked how he would react with respect to MEPA compliance. **Mr. North** replied they have an obligation under MEPA to make a determination on the environment from an application for a permit. Unless it is obvious, an environmental assessment would make that determination, and if there was not a significant impact then they stop with environmental assessment. If they determine it to be a major impact, then an EIS would be requested. They may or may not have a public hearing.

CHAIR. GROSFIELD asked **Mr. North** if they received a permit application for a mine, and it was decided that there would be an EIS, would that end it. **Mr. North** said yes, that would be the end of it, because he didn't believe there would be a judicial review of that decision the way the bill was written. Under current law, that is subject to challenge.

Bob Robinson, Director of Department of Health and Environmental Sciences, said their work is similar to the DSL, but they probably do a lot more of them. They do approximately 300 environmental assessments annually, and less than one EIS per year. The department starts with a check-list when there is a

discharge or subdivision application, and they use the guidelines from the MEPA rules.

Donald Kern, Coalition for Canyon Protection submitted written testimony opposing SB 288. **EXHIBIT 3.**

Closing by Sponsor:

SEN. KEATING said he appreciated all of the comments from the opponents of the bill because they help make his case. They were afraid they would not be able to stop projects at will. A permittee has to pay for a permit and all of the costs of an environmental assessment or an EIS. They have to pay for everything and it takes a lot of time and money. The permit can be challenged in court by anyone, and that delays the process. The plaintiff may not win the suit, but the process has been slowed down, and that has stopped a lot of economic development from coming into the state.

SEN. KEATING said some of the challenges that were filed in court were, electrical engineering, local 254 vs the DSL, DNRC, DHES, FWP, DOH, and the Montana Power Company. In one case, the plaintiff filed a complaint in district court claiming that the agencies should have required an EIS when granting a pipeline right-of-way. The unions had a labor dispute with the MPC and they filed under MEPA challenging the permits requiring an EIS. The MPC and the union went to the bargaining table and settled the issue out of court, and no EIS was done. That challenge cost the DSL $2600 in attorney fees, and MPC a lot of time and money. He said the statement about the bill abusing MEPA is absurd.

{Comments: The committee hearing was recorded on 2, 60 minute tapes}.}

ADJOURNMENT

Adjournment: 3:00 PM

LORENTS GROSFIELD, CHAIRMAN

THEDA ROSSBERG, SECRETARY

LG/TR

MONTANA SENATE
1995 LEGISLATURE
NATURAL RESOURCES COMMITTEE

ROLL CALL DATE 2-8-95

NAME	PRESENT	ABSENT	EXCUSED
VIVIAN BROOKE	✓		
B.F. "CHRIS" CHRISTIAENS	✓		
MACK COLE	✓		
WILLIAM CRISMORE	✓		
MIKE FOSTER	✓		
TOM KEATING	✓		
KEN MILLER	✓		
JEFF WELDON	✓		
BILL WILSON	✓		
LARRY TVEIT, VICE CHAIRMAN	✓		
LORENTS GROSFIELD, CHAIRMAN	✓		

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SENATE NATURAL RESOURCES
EXHIBIT NO. 2
DATE 2-8-95
BILL NO. SB 288

Testimony of

George Darrow, Bigfork, MT,

former Montana State Senator and Chief Sponsor of the

Montana Environmental Policy Act

before the

Senate Natural Resources Committee,

Helena, MT, February 8, 1995

For nearly a quarter of a century, since its enactment in 1971, the Montana Environmental Policy Act has been the declared Legislative policy of the State of Montana for implementing the Constitutional Right to a "clean and healthful environment."

MEPA has functioned in an exemplary manner to protect the use and enjoyment of private property free from needless damage. It has done so, administered **as an arm of the Legislature,** maintaining policy oversight with an absolute minimum of regulation.

Montana, having adopted MEPA, became the only state in the U.S. with an environmental policy administered as an oversight function of the Legislature. In other states and for the federal government, environmental policy is administered by large and costly bureaucracies in the executive branch that do generate a surplus of regulations. ***MEPA embodies no regulatory authority and does not provide for any penalties.***

MEPA provides a coherent, coordinated, consistent state policy to guide all agencies in "major actions significantly affecting the quality of the human environment." In essence, it simply requires state agencies to "look before they leap" and "think before they act." *MEPA outlines a process for the thoughtful consideration of all the impacts and consequences of "significant state agency projects and proposals."* It requires that agencies publicly identify those impacts "along with economic and technical considerations" so as to avoid the otherwise ***unintended, unforeseen, and unwanted consequences*** *of their proposed action.*

MEPA has been enormously successful. Montana has gained national recognition for maintaining the high quality of her environmental resources and lifestyle amenities. Montanans enjoy a quality of life that other states envy and visitors seek. **It is no accident.** Montana ranchers, farmers and other private property owners have benefited from the accrual of hundreds of millions of dollars of increased property values. **It is no accident.** Greater prosperity has become more widely available. More Montanans have had the opportunity to

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...IT NO. 2
DATE 2-3-95
BILL NO. SB 288

share in the economic growth and improved state prosperity resulting from new enterprises and new residents attracted by the quality of life that Montana offers. **It is no accident.**

MEPA is a creature of the Legislature. As a result of its foresight and the unique instrument it created in MEPA, the Montana Legislature provided the institutional wherewithal that has proven itself, over the span of a generation, as a mainstay of Montana's economic progress. **It is no accident** that tourism has become the second largest industry in Montana, and that 80% of the entrepreneurs relocating to Montana were either raised here or came here first as visitors.

All of this has been accomplished at nominal expense by a bi-partisan Environmental Quality Council composed of four Senators and four Representatives, appointed in the same manner as standing committees, and four public members with two each appointed by the Speaker and the Senate President with the consent of the Minority, plus the Governor or his representative as an ex-officio non-voting member. Legislative oversight is exercised by a small, but dedicated and capable staff. Quietly and efficiently, almost without notice, it has functioned to the great benefit of Montana. This oversight, utilizing the format of Environmental Impact Statements, has minimized the irreparable damage to Montana resources and property, both public and private, that might have otherwise resulted from sometimes ill-conceived, misguided, cockamamie proposals.

I believe that by adoption of the provisions of S.B. 288, the Legislature would abdicate its responsibility for implementing the Constitutional Right to "a clean and healthful environment" for all Montanans.

By an inappropriate delegation of its authority, the Legislature would relinquish its duty to enunciate a coherent, coordinated, consistent state environmental policy.

Each agency would be authorized to act on "a case by case basis" as it might from time to time see fit, with whatever consequences might ensue. No administration could keep track of the multitude of decisions arrived at by unguided, uncoordinated whim and impulse. The Legislature, having forfeited all proactive policy guidance, could only confront the subsequent wreckage caused by this "everyone go in all directions at every opportunity" kind of policy abdication. Members of the Committee, I urge you to reject S.B. 288. For Montana's sake–Please. Do not pass.

Thank you for your consideration.

SENATE NATURAL RESOURCES
EXHIBIT NO. 3
DATE 2-8-95
BILL NO. SB-288

NAME DONALD KERN

ADDRESS 1805 JOSLYN ST. #89

HOME PHONE 442-4124 WORK PHONE _____

REPRESENTING COALITION FOR CANYON PROTECTION

APPEARING ON WHICH PROPOSAL? SB 288

DO YOU: SUPPORT _____ OPPOSE X AMEND _____

COMMENTS:

WE DO NOT NEED TO GUT THIS BILL. EITHER STRENGTHEN ENVIRONMENTAL PROTECTION OR LEAVE IT AS IT IS.

Donald A. Kern

WITNESS STATEMENT

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

WITNESS.F11

DATE 2-8-95

SENATE COMMITTEE ON NATURAL RESOURCES

BILLS BEING HEARD TODAY: ~~SB 139~~ SB 252

SB 288

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
DONALD KERN	SELF	SB288		X
ROBIN CUNNINGHAM	FISHING OUTFITTERS ASSOCIATION OF MONTANA	SB 288 SB 252		X
John Vollertsen	Self	SB288		X
Stan Frasier		SB288		X
Judy Jundunen	Santa Fe Pacific Gold			
John Fitzpatrick	Pegasus Gold	SB288 SB252	X	
Elona Darrow	self	SB288	X	X
George Darrow	self	SB288		X
Jeff Barber	Northern Plains Resource Council	SB252		X
GEORGE OCHENSKI	TROUT UNLIMITED	252 288		X
Jim Mockler	MT Coal Council	SB252 SB288	X X	
Willa Hall	LWV	SB288		X
Bob Williams	MT Mine assn	SB252	X	
Angela Janacaro	MT Mine Assoc	SB252	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 2-8-95

SENATE COMMITTEE ON NAT. RESOURCES

BILLS BEING HEARD TODAY: ~~SB 139~~ SB 252
SB 288

2

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Name	Representing	Bill No.	Check One: Support	Oppose
Janet Ellis	MT Audubon	SB 288		✓
Melissa Case	MATB/MHF	SB 288		✓
Sarah Barnard	MATB	SB 288		X
MIKE MURPHY	MT. WATER RES. ASSN	SB 288 SB 252	X	
Larry Brown	Ag. Pres. Assoc.	SB 288 SB 252	X	
Jamara Johnson	CURE	SB 252	X	
Raymond Luzuk	Golden Sunlight Mines	SB 252	X	
Mary A Langley	MONTANA MINING ASSN.	SB 252	X	
David Hemion	MT Assoc of Churches	SB 288		✓
DAVID H. DERSHAM	public citizen	SB 252		X
HUME DAVENPORT	MYSELF	SB 252 SB 288		✓
STEVE PILCHER	DHES	SB 252		✓
Ward Shanahan	STILLWATER MINING	SB 288 SB 252	X X	
Peggy Trenk	WETA	SB 252	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

DATE 2-8-95 3

SENATE COMMITTEE ON NATURAL RESOURCES

BILLS BEING HEARD TODAY: SB 252, SB-288

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
JOHN ARRIGO	DHES	SB252		X
Ted Lange	NPRC	SB288		X
Maureen Cleary-Schwinden	Women In Farm Econom.	SB252		
BOB ROBINSON	DHES	SB252		X
Jim Jensen	MEIC	252 288		X
Don Allen	MT. Wood Products Assn.	252	✓	
Kay Fox	MEIC			X
Jim Richard	MWF	288		✓
Steve Kelly	Friends of the Wild Swan	SB 288 SB 252	→	X X
RALPH A JACKSON	MEIC	288		X
Brad Martin	MT Democratic Party	288		✓
Jim Sampson	Myself			✓
Robt. T. Coulter	Self	288		✓
Ellen R. Bunday	Western Stockgrowers	288		✓

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

DATE 2.8.95

SENATE COMMITTEE ON NAT. RESOURCES

BILLS BEING HEARD TODAY: SB 252 88-288

< ■ > PLEASE PRINT < ■ >

Name	Representing	Bill No.	Check One: Support	Oppose
Ashley Oliverio	self - private landowner	SB 288		X
Katharine A. Brown	Self	288		X
Steve Gilbert	OCA Research	288		X
John Bloomquist	Mt. Stockgrowers	252	X	
Pam Hillery - ~~Pres, MEIC~~	Pres. Bd., MEIC	288		X
Madeleine von Laue	self	288		X

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

REGISTER.F10

MINUTES

MONTANA SENATE
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **CHAIRMAN LORENTS GROSFIELD**, on February 10, 1995, at 12:30 PM.

ROLL CALL

Members Present:
Sen. Lorents Grosfield, Chairman (R)
Sen. Larry J. Tveit, Vice Chairman (R)
Sen. Mack Cole (R)
Sen. William S. Crismore (R)
Sen. Mike Foster (R)
Sen. Thomas F. Keating (R)
Sen. Ken Miller (R)
Sen. Vivian M. Brooke (D)
Sen. B.F. "Chris" Christiaens (D)
Sen. Jeff Weldon (D)
Sen. Bill Wilson (D)

Members Excused: None

Members Absent: None

Staff Present: Todd Everts, Environmental Quality Council
Theda Rossberg, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 137 (following Executive Action on SB 199)
Executive Action:	SB 231, SB 147, SB 199, SB 288, SB 137, SB 145, SB 225, SB 234.

EXECUTIVE ACTION ON SB 231

Motion: **SEN. JEFF WELDON MOVED DO PASS ON SB 231.**

Motion: **SEN. WELDON THEN MOVED TO ADOPT AMENDMENTS NO. sb023102.ate AS CONTAINED IN EXHIBIT 1.**

Discussion: **SEN. WELDON** explained the amendments to the committee members.

CHAIRMAN GROSFIELD, clarified that **SB 199 WILL BE REPORTED OUT OF COMMITTEE WITH A DO NOT PASS RECOMMENDATION.**

{Tape: 2; Side: B}

HEARING ON SB 137

Opening Statement by Sponsor:

SEN. VIVIAN BROOKE, SD 33, Missoula, said that SB 137 was at the request of the DHES. There were other bills in the process that were addressing the same issues, so she recommended tabling SB 137.

EXECUTIVE ACTION ON SB 137

Motion/Vote: SEN. TVEIT MOVED TO TABLE SB 137. MOTION CARRIED UNANIMOUSLY.

{Comments: Meeting recessed at 3:30 PM and reconvened at 7:00 PM.}

ADDITIONAL EXECUTIVE ACTION ON SB 199

CHAIR. GROSFIELD said with the "Do Not Pass" recommendation of SB 199, it would not be debated on the Senate Floor until Monday, February 13th. However, it could be debated on the floor tomorrow if the bill was "Tabled."

Motion/Vote: SEN. FOSTER MOVED TO RECONSIDER THE "DO NOT PASS" ACTION ON SB 199 FOR THE PURPOSE OF TABLING IT INSTEAD. MOTION CARRIED UNANIMOUSLY.

Motion/Vote: SEN. TVEIT MOVED TO TABLE SB 199. MOTION CARRIED WITH SENATORS FOSTER AND WILSON VOTING NO.

EXECUTIVE ACTION ON SB 288

Motion: SEN. KEATING MOVED TO ADOPT AMENDMENTS NO. sb028801.ate AS CONTAINED IN EXHIBIT 8.

Discussion:

SEN. KEATING reviewed the amendments with the committee members.

CHAIR. GROSFIELD asked **Mr. North** what affect the amendment would have on the bill.

John North, Chief Legal Counsel, Department of State Lands, stated that the amendment would not affect the department's

procedures. If they prepared an Environmental Assessment and determined that an Environmental Impact Statement was necessary, and if it was challenged in court, the courts tend to side with the department against the plaintiffs.

Vote: **MOTION TO ADOPT AMENDMENTS NO. sb028801.ate, CARRIED UNANIMOUSLY.**

Motion: **SEN. COLE MOVED TO ADOPT AMENDMENTS NO. sb028802.ate AS CONTAINED IN EXHIBIT 9.**

Discussion:

CHAIR. GROSFIELD explained the amendments to the committee members. The amendments would exclude the Legislalture from MEPA compliance in drafting and passing legislation.

CHAIR. GROSFIELD said the problem is that for example last session they passed SB 401, and if someone was really upset with that bill, under current law they may be able to go to court and say that the Legislature did not comply with MEPA, and therefore the act was void.

SEN. CHRISTIAENS asked about the Montana State Prison with its own sewer lagoon, that is upstream from the water supply for the town of Deer Lodge. **CHAIR. GROSFIELD** responded that the prison belongs to the Executive Branch of the Department of Institutions and they would be subject to an EA.

Bob Robinson, Director, DHES, said that in the case of the prison sewage lagoon, they would have to give a discharge permit, and they would have to do an EA for that permit.

Mr. North said that MEPA says that all state agencies have to do impact statements on recommendations or reports on proposals for legislation. He didn't know if the Legislative Council or the Legislature would be considered an agency of the state.

Vote: **MOTION TO ADOPT AMENDMENTS NO. sb028802.ate, CARRIED WITH SEN. WELDON VOTING NO.**

Motion: **SEN. KEATING MOVED TO DO PASS SB 288 AS AMENDED.**

Discussion:

SEN. FOSTER asked **SEN. KEATING** if his bill would make it so a cement kiln burning hazardous waste would not need an EIS?

SEN. KEATING said no, the procedure would be that the cement plant would make an application for a permit to burn material and remain in compliance with the Air Quality Standards. The DHES and the Air Quality Bureau would do an Environmental Assessment. They would take a look at all the parameters to determine if that was a major action, and get public input and all the information

they could and then determine if that should be an EIS or an EA. If they decide that only an EA is necessary, that could be challenged in court. Those plaintiffs must have the scientific evidence presented to the court to show that it was a major action.

He said, what the bill does is shift the burden of proof from the defendant to the plaintiff, and doesn't interfere with the process at all.

SEN. BROOKE asked if the two parties would go before the court to present their testimony and if it was convincing to the court then the suit could go forward. If it was arbitrary and capricious and not in compliance with the law, it could not go forward. Is that how it would work?

Mr. North said the persons that were dissatisfied would file a suit in district court and in the complaint allege that the EA was inaccurate or incomplete. The department would respond and if the department disagreed it would then go to a trial. The plaintiffs would have to show evidence that the EA was inadequate, but the burden would be on the plaintiffs. Under the proposed bill they would have to show more evidence.

SEN. WELDON said any agency determination could be challenged in court whether or not it was a major or minor action, is that right? **Mr. North** said that was correct, it wouldn't necessarily be a major or minor action, it would be whether or not there was a significant impact on the environment.

Vote: MOTION TO DO PASS SB 288 AS AMENDED, CARRIED WITH SENATORS BROOKE AND WELDON VOTING NO.

EXECUTIVE ACTION ON SB 145

Motion: SEN. KEATING MOVED TO DO PASS SB 145.

DISCUSSION: CHAIRMAN GROSFIELD said the bill as he understands it does nothing to trigger or even urge the Federal Government to give them anything. He said he is probably going to vote against this bill, because he didn't see any need for it.

SEN. KEATING explained that under this bill if and when Congress or the Supreme Court rules that unappropriated public domain in Montana is transferred and title to the lands is conveyed to Montana, that the lands will come under the authority of the State Board. Also, the Attorney General would be vested with the authority to protect the interest of the state and to pursue against claims of the Federal Government in coalition with adjoining western states if such actions are ever brought. He said there was a possibility that the public domain could be appropriated to the western states if they seek redress in the Supreme Court or if Congress decides to reapportion lands to all

SENATE NATURAL RESOURCES
EXHIBIT NO. 8
DATE 2-10-95
BILL NO. SB 288

Amendments to Senate Bill No. 288
First Reading Copy

Requested by Senator Keating
For the Committee on Natural Resources

Prepared by Todd Everts
February 10, 1995

2-10-95

1. Title, line 4 through line 9.
Strike: "EXEMPTING" on line 4 through "ACT" on line 9.
Insert: "CLARIFYING THE BURDEN OF PROOF FOR ACTIONS IN WHICH AN AGENCY DETERMINES NOT TO CONDUCT AN ENVIRONMENTAL IMPACT STATEMENT"

2. Title, line 9 and 10.
Strike: "SECTIONS" on line 9 through "AND" on line 10
Insert: "SECTION"

3. Page 1, line 19.
Strike: "subsections"
Insert: "subsection"
Strike: "and (3)"

4. Page 4, line 1 through line 8.
Strike: "An" on line 1 through "actions."
Insert: "In any action challenging or seeking review of an agency's determination that a statement pursuant to subsection (1)(b)(iii) is not required, the burden of proof is on the person challenging the decision. A court may not set aside the agency's decision unless it finds that there is clear and convincing evidence that the decision was arbitrary or capricious or not in compliance with law."

5. Page 4, lines 10 through 17.
Strike: Section 2 in its entirety

SENATE NATURAL RESOURCES
EXHIBIT NO. 9
DATE 2-10-95
BILL NO. SB-288

Amendments to Senate Bill No. 288
First Reading Copy

Requested by Senator Grosfield
For the Committee on Natural Resources

Prepared by Todd Everts
February 10, 1995

2-1

1. Title, line 5.
Following: "ACT;"
Insert: "EXEMPTING THE LEGISLATURE FROM THE PROVISIONS OF THE MONTANA ENVIRONMENTAL POLICY ACT;"

2. Page 1, line 19.
Following: "except"
Insert: "the legislature and except"

3. Page 1, line 26.
Strike: "legislation,"

HOUSE NATURAL RESOURCES

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
SB0153	BROOKE, VIVIAN 2/06	3/03	CONFORM TO SAFE DRINKING WATER ACT; CREATE WELLHEAD PROTECTION PROGRAM	CONCUR AS AMENDED 3/10 VOTE: 14-3		3/13
SB0186	BECK, TOM 2/06	3/10	DSL ABANDONED MINE RECLAMATION AUTHORITY	CONCUR 3/10 VOTE: 17-0		3/13
SB0200	LYNCH, J. D. 2/15	3/06	REVISE AND CLARIFY CECRA (COMPREHENSIVE ENVIRONMENTAL CLEANUP & RESPON. ACT)	CONCUR AS AMENDED 3/8 VOTE: 16-2		3/09
SB0203	GROSFIELD, LORENTS 2/01	2/10	WATER RIGHTS COMPACT -- BIGHORN CANYON AND LITTLE BIGHORN BATTLEFIELD	CONCUR 3/3 VOTE: 13-5		3/06
SB0204	GROSFIELD, LORENTS 2/06	3/03	PUBLIC WATER SUPPLY ACT ENFORCEMENT REVISIONS	CONCUR AS AMENDED 3/6 VOTE: 17-1		3/07
SB0225	TOEWS, DARYL 2/20	3/08	REQUIRE SALE OF SOME STATE LANDS IN DANIELS/VALLEY/GARFIELD/PHILLIPS COUNTY	TABLED ON 03/16 VOTE: 13-3		
SB0231	MESAROS, KEN 2/15	3/08	PRIVATE PROPERTY RIGHT CONSIDERATIONS UNDER MEPA	CONCUR 3/10 VOTE: 12-5		3/13
SB0252	TVEIT, LARRY 2/27	3/10	CLARIFY WATER QUALITY LAWS Tabled 3/13 - 11-7	CONCUR AS AMENDED 3/15 VOTE: 12-6		3/16
SB0288	KEATING, TOM 2/20	3/08	REVISE THE MONTANA ENVIRONMENTAL POLICY ACT	CONCUR 3/10 VOTE: 9=8		3/13
SB0330	SWYSGOOD, CHUCK 2/27	3/13	WATER QUALITY NONDEGRADATION REVISIONS Postponed 3/21	CONCUR AS AMENDED 3/22 VOTE: 12-6		3/23
SB0331	BECK, TOM 2/27	3/13	GENERALLY REVISE THE MONTANA WATER QUALITY ACT	CONCUR AS AMENDED 3/21 VOTE: 12-6		3/22
SB0346	FORRESTER, GARY 2/27	3/20	TEMPORARY WATER TREATMENT STANDARDS - NATURAL CONDITION	CONCUR AS AMENDED 3/21 VOTE: 18-0		3/22

MINUTES

MONTANA
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **Rep. Dick Knox, Chairman,** on March 8, 1995, at

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Scott J. Orr (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Emily Swanson (D)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing:	SB 231, SB 288, SB 225
Executive Action:	SB 200 Be Concurred In As Amended
	SB 147 Be Concurred In As Amended

Tape 1, Side A

MINUTES

MONTANA
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **Rep. Dick Knox, Chairman,** on March 8, 1995, at

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
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Rep. Carley Tuss (D)
Rep. Douglas T. Wagner (R)

Members Excused: None

Members Absent: None

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

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Committee Business Summary:

Hearing:	SB 231, SB 288, SB 225
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	SB 147 Be Concurred In As Amended

Tape 1, Side A

assessment. **SEN. MESAROS** said MEPA already takes economic and social effects into consideration. SB 231 focuses on regulations.

REP. STORY said there has been concern that there isn't any definition for private property and asked **Mr. Bloomquist** if he shared that concern. **Mr. Bloomquist** said he didn't share that concern. MEPA has many undefined terms. Real property interests, personal property interests, and water rights are some of the interests that are addressed in relation to property rights.

Closing by Sponsor:

SEN. MESAROS quoted **President Teddy Roosevelt.** "In every civilized society property rights must be carefully safeguarded. Ordinarily and in the great majority of cases human rights and property rights are fundamentally in the long run identical." **SEN. MESAROS** urged the committee to support SB 231.

HEARING ON 288

Opening Statement by Sponsor:

SEN. TOM KEATING, Senate District 5, Billings, said SB 288 would amend the Montana Environmental Policy Act (MEPA), but would not impact the environment. The legislation would help the development of business and industry in the state and still retain all the safeguards for the environment. MEPA states that all actions of government are major actions and thereby require an environmental impact statement (EIS) unless the department deems that it is a minor action, in which case a permit could be issued under an environmental assessment (EA). Presently, if a third party doesn't like that decision, it can file a complaint in district court saying that a permit required by the department is a major action of government and requires an EIS. There doesn't have to be proof of anything. The bill would leave the determination of whether an EIS or an EA is needed entirely to the department. In the past some people have abused the system by filing complaints without having to prove their case and the department has to go to the expense of proving its innocence. SB 288 would put the burden of proof on the person challenging the department's decision.

Proponents' Testimony:

Jim Mockler, Montana Coal Council, said an EA would cost an applicant approximately $50,000. An EIS would cost an applicant approximately $250,000. The burden of proof throughout the permitting process is on the applicant to show that he can meet the required specifications to obtain the permit. The bill puts an equal burden of proof on a plaintiff to show that an EA is not

sufficient. The bill is fair to those who would like to have economic activity in Montana.

Frank Crowley, American Smelting and Refining Company, Rosebud Energy Company and Butte Mining, said SB 288 addresses the extent to which a court is going review the department's decision. It ensures the department that there will have to be clear and convincing evidence that its decision not to do an EIS was wrong and that is a good reason for supporting this bill.

Tape 2, Side A

Peggy Trenk, Western Environmental Trade Association, Montana Chamber of Commerce, urged the committee's support of SB 288.

Eric Williams, Pegasus Gold Mining Company, Montana Mining Association, supported SB 288.

Gail Abercrombie, Montana Petroleum Association, said SB 288 will give agencies some security in their decision making. **Ms. Abercrombie** urged the committee to support SB 288.

Russ Ritter, Montana Resources of Butte, supported SB 288.

Opponents' Testimony:

Anne Hedges, Montana Environmental Information Center, said the bill takes away the public's right to see the information that the government uses to justify its actions. The government is supposed to be protecting the public and it has a right to that information. The burden should not be on the public to present the information that the department hasn't provided; the burden should be on the department that is doing the EIS or decides that it is not necessary.

Debbie Smith, Sierra Club, said SB 288 tells the agencies to "look before you leap, but you don't have to look too hard." The bill uses a hatchet to address abuses that are already dealt with through attorney sanctions and malicious prosecution action.

Stan Frasier, Self, opposed SB 288 and said there needs to be more public participation in state government.

Sam Babich, Self, said MEPA is there to protect the citizens of Montana. **Mr. Babich** urged the committee not to support SB 288.

Ted Lange, Northern Plains Resource Council, said the Montana Constitution guarantees the right to a clean and healthful environment. MEPA is the law that outlines the way that agencies look at their proposed actions to make sure that they preserve that right to a clean and healthful environment. MEPA works well the way it is and should not be weakened.

Brad Martin, Director, Montana Democratic Party, opposed SB 288.

J. V. Bennett, Montana Public Interest Research Group, opposed SB 288 and urged the committee to table it.

Joe Gutkoski, Bozeman. Written testimony. **EXHIBIT 5**

Tony Schoonen, Self, opposed SB 288.

Jim Emerson, Self, opposed SB 288.

Informational Testimony: None

Questions From Committee Members and Responses:

REP. HAL HARPER asked **SEN. KEATING** if SB 288 wasn't running counter to the theme of this legislative session which says strengthen rights of citizens and if anything, decrease the rights of government versus citizens. **SEN. KEATING** said he didn't think so. The permitting process is still there. The standards and criteria are all in the statutes. In the permitting process there are public hearings. All a plaintiff has to do is file his complaint in court and bring in the evidence that he is going to be hurt, whether it is something running downhill or blowing through the air. **REP. HARPER** said the burden of proof has been shifted to a person who wants to challenge the agency's decision which will make it more costly and more difficult for a citizen to win. He asked **SEN. KEATING** if the essence of the bill wasn't making it more difficult and more costly for a citizen to try to force an agency to comply with what he thinks is the law. **SEN. KEATING** agreed that it would be more costly.

REP. JON ELLINGSON asked **Mr. Crowley** for an example of an agency in Montana that had been challenged for not doing an EIS. **Mr. Crowley** said there are two or three cases where decisions of agencies not to do an EIS have been challenged. **REP. ELLINGSON** asked **Mr. Crowley** if the burden of proof was on the persons challenging those decisions at that time. **Mr. Crowley** said the burden-of-proof is typically on the plaintiff unless it is shifted later on. **REP. ELLINGSON** asked **Mr. Crowley** if SB 288 would change that. **Mr. Crowley** said the bill does not involve burden of proof shifting.

Tape 2, Side B

REP. BOB RANEY asked **SEN. KEATING** how an ordinary citizen would be able to afford the expense of providing the burden of proof when he would be fighting the government as well as the industry. **SEN. KEATING** said the purpose of the bill is to put the burden of proof on the plaintiff. The plaintiff must gather all of the impact information, which is public information, and give the court reasons why he thinks the information is insufficient. This would be done at the plaintiff's expense. **REP. RANEY** said it would be almost insurmountable for an ordinary citizen to gather the revenue, all the needed information, hire an attorney to take

his complaint against the state and the company to court, and win. **SEN. KEATING** said he was sure there were sufficient environmental groups that would come to the aid of the plaintiff.

REP. BILL TASH asked **John North, Department of State Lands (DSL)**, if there were any recent court cases filed against the state for not doing EIS's. **Mr. North** said he could recall eight cases in the last ten years. The state won three and lost five of those cases. DSL has lost two and won one of the most recent cases filed against it.

REP. DAVID EWER asked **Katherine Orr, Legal Counsel, Department of Health and Environmental Sciences (DHES)** how many times DHES has been challenged for not doing an EIS. **Ms. Orr** said that during her ten-year tenure with the department she could recall only one challenge and that was made by the Church Universal and Triumphant. The challenge was regarding the scope and adequacy of the EIS. The department won the case.

REP. RANEY asked **Ms. Orr** if it was true that even though the department won the overall case, it had to do the scoping process over. **Ms. Orr** said there was an earlier case around 1987 involving the Church Universal and Triumphant that was a scope challenge. Later, there was a question about whether the cumulative impacts throughout the valley were sufficiently considered. The state did enlarge the scope of its analysis. **REP. RANEY** asked **Ms. Orr** if the department had to do the EIS again. **Ms. Orr** said the department agreed to do a supplemental EIS after the initial challenge.

Closing by Sponsor:

SEN. KEATING said the complaints he has seen filed have been by groups and rarely by an individual. The reasons for the complaints were to slow down the process so the applicant would have to pay more money, which would discourage him from continuing with the project. The bill will relieve the pressure put on state agencies and they will be able to do a better job. The environment will still be protected and it might encourage more development, more jobs and a better economy.

Tape 3, Side A

HEARING ON SB 225

Opening Statement by Sponsor:

SEN. DARYL TOEWS, Senate District 48, Lustre, said SB 225 proposes the sale of state lands in certain counties. In Daniels County about 24% of the lands are owned by the state. In the western half of the county over 50% of the lands are owned by the state. Most of the other counties in the state have about six percent of state-owned lands. State lands in excess of five

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Natural Resources COMMITTEE BILL NO. SB 288

DATE 3-8-95 SPONSOR(S) Senator Keating

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Joe Gutkoski Pres	Madison Gallatin Alliance		✓
Judith Gunderson		✓	
James Emerson			✓
Ed Johns GT Falls	Russell Country Sportsmans Assoc		✓
John Daggett Glasgow	[redacted] Myself		✓
Tony Schoonen	State Lands Coal		X
SAM BABICH	SKI LINE SPORTSMAN ASS MONTANA ACTION FOR ACCESS		X
Dianne McDermand	self		X
Bob Rooney	Self		X
[illegible]	SELF		X
Carl Prinzing MSLA 241 W. Main ST 59802	MT Assoc of Realtors	X	
Allan Rollo	Self		X
Jim McDonald	Self		X
Gail Abercrombie	MT Petroleum Assn	X	

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Natural Resources COMMITTEE BILL NO. SB 288

DATE 3/8/95 SPONSOR(S) Senator Keating

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Wade Sikorski	Self		✓
GEORGE OCHENSKI	TROUT UNLIMITED		✓
Don Allen	MT Wood Products Assn	✓	
Tom Elzery	Exxon	✓	
Ted Lange	NPRC		✓
Lorna Frank	MT. Farm Bureau	X	

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HOUSE OF REPRESENTATIVES
VISITOR'S REGISTER

House Natural Resources COMMITTEE BILL NO. SB 288

DATE 3/8/95 SPONSOR(S) Keating

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Anne Hedges	MEIC		X
J.V. Bennett	MontPIRG		X
Peggy Trenk	WETA	X	
Gary Langley	MT. Mining Assn.	X	
L.F. Thomas	Anaconda Sportsmen		X
Eric Williams	Pegasus Gold	X	
Bird Martus	MT Preservation Party	~~X~~ →	X
Deborah Smith	Sierra Club		X
Janet Ellis	MT Audubon		X
Jim Mockler	MT. Coal Council	←	
Jeff Barber	NPRC		X
Mark Sharley	Self		X
Frank Crowley	ASARCO Yellowstone Energy Ltd. Partner Rosebud Energy	✓	
Stan Frasier	Self		X

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

COMMITTEE ON NATURAL RESOURCES

Call to Order: By **Rep. Dick Knox, Chairman,** on March 10, 1995, at 3:00 pm.

ROLL CALL

Members Present:

Rep. Dick Knox, Chairman (R)
Rep. Bill Tash, Vice Chairman (Majority) (R)
Rep. Bob Raney, Vice Chairman (Minority) (D)
Rep. Aubyn A. Curtiss (R)
Rep. David Ewer (D)
Rep. Daniel C. Fuchs (R)
Rep. Hal Harper (D)
Rep. Karl Ohs (R)
Rep. Paul Sliter (R)
Rep. Robert R. Story, Jr. (R)
Rep. Jay Stovall (R)
Rep. Lila V. Taylor (R)
Rep. Cliff Trexler (R)
Rep. Douglas T. Wagner (R)

Members Excused: Rep. Jon Ellingson (D)
Rep. Scott Orr (R)
Rep. Emily Swanson (D)

Members Absent: Rep. Carley Tuss

Staff Present: Michael Kakuk, Environmental Quality Council
Alyce Rice, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 252, SB 362, SB 186
Executive Action: SB 186 Be Concurred In
SB 153 Be Concurred In As Amended
SB 231 Be Concurred In
SB 288 Be Concurred In

Tape 1, Side A

REP. OHS distributed and explained an amendment to SB 153. **EXHIBIT 6**

Motion/Vote: **REP. OHS MOVED THE AMENDMENT TO SB 153.** Voice vote was taken. **Motion carried unanimously.**

Motion/Vote: **REP. BILL TASH MOVED SB 153 BE CONCURRED IN AS AMENDED.** Voice vote was taken. **Motion carried 14 to 3. REP. DANIEL FUCHS, REP. DOUG WAGNER and REP. SCOTT ORR voted no.**

EXECUTIVE ACTION ON SB 231

Motion/Vote: **REP. PAUL SLITER MOVED SB 231 BE CONCURRED IN.** Voice vote was taken. **Motion carried 12 to 5. REP. HAL HARPER, REP, DAVID EWER, REP. BOB RANEY, REP. EMILY SWANSON and REP. JON ELLINGSON voted no.**

EXECUTIVE ACTION ON SB 288

Motion: **REP. PAUL SLITER MOVED SB 288 BE CONCURRED IN.**

Discussion:

REP. HAL HARPER said SB 288 will aid large corporations and will make it more difficult for a citizen to force an agency to do an EIS.

REP. BOB RANEY said the Department of State Lands testified that citizens had brought eight suits against the department and the citizens had won five of them. SB 288 will make it so difficult the citizens won't be able to get involved.

Vote: Voice vote was taken. **Motion carried 9 to 8. REP. BOB RANEY, REP. EMILY SWANSON, REP. JON ELLINGSON, REP. HAL HARPER, REP. DAVID EWER, REP. DANIEL FUCHS, REP. CLIFF TREXLER, and REP. PAUL SLITER voted no.**

HOUSE OF REPRESENTATIVES

Natural Resources

ROLL CALL DATE 3-10-95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Dick Knox, Chairman	✓		
Rep. Bill Tash, Vice Chairman, Majority	✓		
Rep. Bob Raney, Vice Chairman, Minority	✓		
Rep. Aubyn Curtiss	✓		
Rep. Jon Ellingson			✓
Rep. David Ewer	✓		
Rep. Daniel Fuchs	✓		
Rep. Hal Harper	✓		
Rep. Karl Ohs	✓		
Rep. Scott Orr			✓
Rep. Paul Sliter	✓		
Rep. Robert Story	✓		
Rep. Jay Stovall	✓		
Rep. Emily Swanson			✓
Rep. Lila Taylor	✓		
Rep. Cliff Trexler	✓		
Rep. Carley Tuss		✓	
Rep. Doug Wagner	✓		

HOUSE STANDING COMMITTEE REPORT

March 13, 1995

Mr. Speaker: We, the committee on **Natural Resources** report that **Senate Bill 288** (third reading copy -- blue) **be concurred in.**

Signed: Dick Knox
Dick Knox, Chair

Carried by: Rep. Curtiss

Committee Vote:
Yes 9, No 8.

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